Sri G. B. SHANKAR RAO.—Will the Divisional Committees call for applications or will the applications that are now with the P.S.C. would be sent to the committees ?

Sri B. D. JATTI.—It will be legally examined.

Mr. SPEAKER.—Question time is over.

PAPERS LAID ON THE TABLE

Sri B. D. JATTI (Chief Minister).—Sir, I beg to lay on table Notification No. GAD 33 SSC 61 dated 23rd October, 1961 (further amendment to the Mysore Public Service Commission (consultation) Regulations, 1958, as required under clause (5) of Article 320 of the Constitution of India.

INTRODUCTION OF BILLS.

MYSORE SALES TAX (FOURTH AMENDMENT) BILL, 1961.

Sri J. H. SHAMSUDDIN (Deputy Minister for Finance).—I beg to introduce the Mysore Sales Tax (Fourth Amendment) Bill, 1961.

Mr. SPEAKER.—The Mysore Sales Tax (Fourth Amendment) Bill, 1961, is introduced.

MADRAS ALIYASANTHANA (MYSORE AMENDMENT) BILL, 1961.

Sri VAIKUNTA BALIGA (Minister for Law and Labour).—Sir, I beg to introduce the Madras Aliyasanthana (Mysore Amendment) Bill, 1961.

Mr. SPEAKER.—The Madras Aliyasanthana (Mysore Amendment) Bill, 1961 is introduced.

THE MYSORE SHOPS AND COMMERCIAL ESTABLISHMENTS BILL, 1961 AS PASSED BY THE LEGISLATIVE COUNCIL.

Consideration of Clauses—(Contd.)

Mr. SPEAKER.—Clause 7. There is an amendment.

Sri V. SRINIVASA SHETTY (Coondapur).—Sir, I beg to move :

"That in sub-clause (1) for the words 'nine hours' the words 'eight hours' shall be substituted."

Mr. SPEAKER.—Amendment moved :

"That in sub-clause (1) for the words 'nine hours' the words 'eight hours' shall be substituted."

†Sri V. SRINIVASA SHETTY.—Sir, I have already said that the law and as it is in Madras, Andhra and Kerala and some other States provides for eight hours. In the earlier Madras Act also, it is the same thing. Why suddenly, this 9 hour Business has crept in I cannot understand. Of course one stock answer that the Hon'ble Minister is likely to give is that it is contained in the draft Bill before the Government. I am really unable to understand this mentality of the Hon'ble Minister, Sir. Is this rise in the hours of work, is it in the interest of the worker ? Even now, I request the Hon'ble Minister to consider this aspect favourably and not to give any scope for the workers for further agitation in the matter. So, I request the Hon'ble Minister to kindly accept this very simple amendment in the interest of labour.

†Sri M. C. NARASIMHAN (Kolar Gold Fields).—Sir, I have only one word to and. Sub-clause (2) says that persons up to 15 years of age are entitled to work 5 hours a day. Persons above the age 15 and up to 18 they will also be required to work 9 hours a day. That obviously would be a hardship. That was the reason why the Madras Act, the Hyderabad Act provided only 8 hours. But the total number of hours shall not exceed 48 hours. People between the ages of 18 and 19 would be called upon to work for nine hours which would be a serious hardship. In this particular sphere, namely Shops and Commercial Establishments, there are large number of adolescents in employment. I request the Hon'ble Minister at least to have sympathy for this class of persons and accept the amendment.

†Sri B. VAIKUNTA BALIGA (Minister for Law and Labour).—Sir, this question was fully considered by the Select Committee also and this 9 hours, it should be remembered, is controlled by 49 hours in the week. For the whole week there should be an aggregate of 48 hours and that is not changed. Even in the course of the debate, I was able to notice Sir, between two Hon'ble Members on the Oposite, explanations were being given and I think I can safely mention the name of My Hon'ble friend Sri Y. Veerappa. I cannot accept the amendment, Sir.

Sri V. SRINIVASA SHETTY.—Sri. Veerappa did not say 9 hours, Sir.

Mr. SPEAKER.—The question is :

"That in sub-clause (1) for the words 'nine hours' the words 'eight hours' shall be substituted."

The amendmeat was negatived.

Mr. SPEAKER.—The question is :

"That Clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to to the Bill.

Mr. SPEAKER.—Clause 8. The question is :

"That Clause 8 stand part of the Bill".

The motion was adopted.

Clause 8 was added to the Bill.

Mr. SPEAKER.—Clause 9—there is an amendment.

Sri V. SRINIVASA SHETTY.—We are not moving that amendment, Sir.

Mr. SPEAKER.—The question is :

"Clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Mr. SPEAKER.—Clauses 10, 11, 12, 13 and 14 : The question is :

"That Clauses 10, 11, 12, 13 and 14 stand part of the Bill."

The motion was adopted.

Clauses 10, 11, 12, 13 and 14 were added to the Bill.

Mr. SPEAKER.—Clause 15, There is an amendment.

Sri V. SRINIVASA SHETTY.—Sir, I beg to move :

"That in Clause 15, in sub-clause (1) for the words 'worked for a period of two hundred and forty days or more in an estahlishment' the words 'has worked in the establishment' shall be substituted."

Mr. SPEAKER.—Amendment moved :

"That in Clause 15, in sub-clause (1) for the words 'worked for a period of two hundred and forty days or more in an establishment' the words has 'worked in the establishment' shall be substituted."

† Sri M. C. NARASIMHAN.—Sir, this clause as it stands, it require that a person in order to be entitled to leave must necessarily work for 240 days during any year in the establishment. In the present enactments of Madras and also of Ex-Hyderabad and even in Bombay, the phraseology is slightly different. It says that if a person is on the roles f an establishment during the year, then it will be deemed that he would be entitled to leave facility. I do not know why it is at present sought to be changed. Because as I see this requirement is not very relevant at all, because the total amount of leave itself is now sought to be regulated with reference to the number of days for which he has worked. If he has worked during any year for a lesser number of days, he will proportionately get lesser number of days of leave with wages. This requirement of 240 days work is not at all necessary.

A further difficulty in the case of Shops and Commercial establishments is, generally the employer may keep him on his establishment and choose not to give him any work, or he may say that the worker may stop working in his suddenly. If that is done,

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there is absolutely no remedy for the worker at all. In view of this, I feel that the clause may be suitable amended to say not 240 days of work, but that he should be on the rolls on the establishment for so many days.

†Sri B. VAIKUNTA BALIGA.—Sir, I must confess that I am unable to accept the amendment. The reason is obvious. The idea is that the workers should be able to work for a stated number of hours during a particular in order to enable him to get the annul holiday. This was not specifically provided in the earlier enactments. One thing is certain. In order to enable that person to get his annul holiday person should normally work for a definite number of days during the year. He cannot get the holidays by just working for a month or two only in the year. The idea has now been clarified by putting the correct number of days during which he should work. The principle is that he has to get one holiday for every 20 working days, It is a perfectly reasonable provision that has been made and I do not know what exactly their grievance.

Sri M. C. NARASIMHAN.—This mention of 240 days is not relevant requirement at all. It is just sufficient that he is on the rolls. The other clause provides that for every 20 days of work, he gets one day holiday. He may be on the rolls of the establishment, but for several reasons, he may not be able to work. Then also, he should not be deprived of his holiday is the point.

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Sri B. VAIKUNTA BALIGA.—This aspect has not been missed. It is provided in the Explanation. A person who normally works for a period of 240 days should be entitled to leave computed on the basis mentioned here. There was no uniformity in this respect in the existing Acts. The number of days differed from 11 to 20. Now uniformity has been brought in. It is a very resonable limit. Let us see how it works. If it works any hardship, then we can always amend it. When uniformity is brought about, it is ineritable that something will emerge which may differ from the existing provision in some respects.

Mr. SPEAKER.—The question is :

"In sub-clause (1) for the wodrs, 'worked for a period of two hundred and forty days or more in an establishment' the words 'has worked in the establishment' shall be substituted."

The amendment was negatived.

Sri V. SRINIVASA SHETTY.—I beg to move :

"That after item (c) of Explanation 1 to sub-clause (1) the following shall be added namely:—

(*d*) any period during which the employee has been refused work."

Mr. SPEAKER.—Amendment moved :

"That item (*c*) of Explanation 1 to sub-clause (1) the following shall be added namely:—

(*d*) any period during which the employee has been refused work."

†Sri M. C. NARASIMHAN.—Sir, this is self-explanatory. The first requirement was that he should work for 240 days and that is computed on the basis of the Explanation in (*a*), (*b*) and (*c*). But the employer may arbitrarily choose to refuse to given work to an employee. That is not all envisaged here. It cannot be said to be lay-off. So it is necessary to clarify what would happen in such a contingency ? The employee should not be deprived of leave with wages in such a contingency.

†Sri B. VAIKUNTA BALIGA.—When an establishment is working and an individual worker is refused work, it means that he does not work on that day and enojoys a holiday and gets wages. As far as a monthly salaried employee is concerned, to say that if a person is refused work on a day he will not get wages for that day, is something which I cannot understand. I do not think an employer will arbitrarily refuse work to an employee. We cannot anticipate such hypothecial cases and provide for it. I am sorry I am unable to accept the amendment.

Mr. SPEAKER.—The question is :

"That after item (*c*) of Explanation 1 to sub-clause (1) the following shall be added namely:—

(*d*) any period during which the employee has been refused work."

The amendment was negatived.

Sri V. SRINIVASA SHETTY.—I beg to move:

"That sub-clause (2) shall be deleted."

Mr. SPEAKER.—Amendment moved :

"That sub-clause (2) shall be deleted."

†Sri M. C. NARASIMHAN.—This provides for a new idea which was not there in the existing legislation. It takes into account that if a person enters service on the 1st day of January he shall be entitled to leave for the whole year, but if he enters on any other day he will get only 2/3 rds of the leave. If leave is related to the total number of days work, I do not see why such a provision as this should exist. It is not in the interests of the employee.

†Sri B. VAIKUNTA BALIGA.—The idea of a calendar has been brought in here. It is likely that all people will not be in employ from the beginning till the end and that is why this provision has been made for persons who join the service later than 1st January. I am sorry I am unable to accept this amendment.

Mr. SPEAKER.—The question is.

"That sub-clause (2) shall be deleted."

The amendment was negatived.

Sri V. SRINIVASA SHETTY.—I beg to move :

"That in sub-clause (3) for the words, 'not exceeding' the word, 'of' shall be substituted."

Mr. SPEAKER.—Motion moved :

"That in sub-clause (3) for the words 'not exceeding' the word 'of' shall be substituted."

†Sri M. C. NARASIMHAN.—This is a very simple amendment. There are any number of agreements and contracts which provide for more number of days of sick leave. In future it is quite possible that employees may take advantage of a particular situation and agitate for a greater number of days of sick leave because this legislation does not provide for casual leave with wages. If the statute itself fixes the upper limit for the total leave that a person is entitled to on grounds of sickness, etc., then it will lead to a very serious and anomalous situation. If the statute fixes the upper limit as 12 days, then he is entitled to only 12 days, but if he wants more and if the employer is willing to give more, it should be possible for him to get that and the statute should not operate as a bar to his getting more. There is no such wording in similar enactments. So I hope this amendment can be accepted. If the Minister is obsessed with the idea, as he appears to be all along, that the draft Bill of the Government of India should be copied verbatim, then I have nothing to say.

Sri B. VAIKUNTA BALIGA.—I may assure my friend that I am not obsessed with any idea. I do not know why he says like that. My friend must refer to Section 35 of the Act where the point he has raised is met. He referred to an agreement which it will be possible for the parties to enter into. It is specifically provided in section 35 that 'Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to under any other law contract custom or usage, applicable to such establishment, etc. So, there is ample provision. It is a hasty criticism.

Mr. SPEAKER.—The question is :

"That in sub-clause (3) for the words, 'not exceeding' the word, 'of' shall be substituted."

The amendment was negatived.

Sri B. VAIKUNTA BALIGA.—Sir, I beg to move :

"That in sub-clause (3) for the words, 'or for any other reasonable cause' shall be added at the end."

Mr. SPEAKER.—Amendment moved :

"That in sub-clause (3) the words 'or for any other reasonable cause' shall be added at the end."

Sri B. VAIKUNTA BALIGA.—Sir, I am sure the amendment will be accepted by the House because it is only providing for any other contingency. It will not do any harm to anybody.

Mr. SPEAKER.—The question is :

"That in sub-clause (3) the words 'or for any other reasonable cause' shall be added at the end."

The amendment was adopted

Sri M. C. NARASIMHAN.—Sir, I beg to move :

"That at the end of sub-clause (3) the following proviso shall be added :—

Provided that absence of the employee due to lay-off, authorized leave either under any law or otherwise or due to a legal strike not declared as illegal shall not be deemed as interruption of continuous service."

Mr. SPEAKER.—Amendment moved :

"That at the end of sub-clause (3) the following proviso shall be added :—

Provided that absence of the employee due to lay-off, authorized leave either under any law or otherwise or due to a legal starke not declared as illegal shall not be deemed as interruption of continuous service."

†Sri M. C. NARASIMHAN.—Whenever the words 'continuous service' occur in the employer-employee relations, there is always a difference of opinion as to what is continuous service. This matter came up in the Industrial Disputes Act also. The Industrial Disputes Act defines what is continuous service for a majority of purposes under the Industrial Disputes Act. My amendment incorporates that idea and is more or less on the same pattern as the provision in the Industrial Disputes Act in this behalf. There may be an interruption due to a cause beyond the control of the employee and these are the causes which are mentioned here. For example, lay-off, etc. If this is clarified the matter will be set at rest and will not give rise to any difficulty.

†Sri B. VAIKUNTA BALIGA.—I feel it is more a doubt entertained by the Hon'ble Member because continuous service includes weekly holidays. Whenever an establishment has worked, if the person has been there and has worked, it is all right. If on any particular day he is absent without leave when the shop is not closed, it is broken. I will therefore request the Hon'ble Member not to press his amendment.

Sri M. C. NARASIMHAN.—But what about a strike which is legal ?

Sri B. VAIKUNTA BALIGA.—That is perfectly proper.

Sri M. C. Naraimhan's amendment was by leave of the House withdrawn.

Sri M. C. NARASIMHAN.—Sir, I beg to move:

"That in the first proviso to sub-clause (7) for the words 'thirty days' the words 'fifty two days' and for the words 'forty days' the words 'sixty days' shall be substituted."

Mr. SPEAKER.— Amendment moved :

"That in the first proviso to sub-clause (7) for the words 'thirty days' the words 'fifty two days' and for the words 'forty days' the words 'sixty days' shall be substituted."

†Sri M. C. NARASIMHAN.— Sir, this sub-section (7) provides for accumulation of leave upto 30 days. It is not a very happy provision as it stands now because the existing Shops and Establishments Act in the old Mysore Area, in the Madras Area, Hyderabad Area and Bombay Area provides for accumulation of leave for a total period of two years. Under section 15 (1) a person is entitled to a maximum of leave with wages ; it might be about 15 days. Under sub-clause (3) a person is entitled 12 days' sick leave. Together it will amount to 27 days. A person may not take leave during the year due to exigencies of office work or due to other causes and the proviso restricts him from carrying forward his leave upto to thirty days. That is really not proper and I do not know how it can be justified in terms of the right of the employees. It may be argued that it will disturb the working of the the establishment. It can be taken care of amply by saying that the spread over of leave can be adjusted. The second proviso says: "Provided further that an employee who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-sections (i) and (ii) shall be entitled to carry forward the unavailed leave without any limit" The idea that it will disturb the business is not seriously taken care of here. Even under the Factories Act, the maximum a person can forward is limited. Here, it incorporates a new idea, but this principle is not taken adequate care of in the first proviso.

Sir B. VAIKUNTA BALIGA.—We have to remember that the provision under debate is with regard to carrying forward leave which has not been utilized. The leave that is available is generally utilized and if it is a question of carrying forward, there must be certain limit and the limit has been provided as 30 days. My friend in the course of his argument anticipated me by saying that the prolonged leave accumulated with certain purpose might dislocate the business. He is perfectly right there, and that is why certain limit is put. Where the employer does not give the employee leave, it has been provided that it can be carried without any limit. When it comes to a question of the employer not being able to give leave or refuses to give leave and the accumulation is due to no fault of the employee, no limit is placed. This is so far as the second proviso is concerned.

With regard to the first, I feel that thirty days carrying forward with regard to what he has earned during the current year, all that will be available.

Sri M. C. NARASIMHAN.—It refers to sick leave as well as privilege leave. Why not sick leave be allowed to accumulate ?

Sri B. VAIKUNTA BALIGA.—Accumulation is the very point. It is going to disturb.....

Sri M. C. NARASIMHAN.—He can get sick leave only when he produced medical certificate. Why not you provide him more of accumulation under sick leave ?

Sri B. VAIKUNTA BALIGA.—My friend explained the distinction between the two kinds of leave. Actually earned leave, how far it is allowed to be accumulated and carried forward—there the point comes. The unit is 30 days regardless of the nature of leave. Therefore it has been provided for 30 days. For the present, I am unable to accept the amendment.

Mr. SPEAKER.—The question is :

"That in the first proviso to sub-clause (7) for the words 'thirty days' the words 'fifty-two days' and for the words 'forty days', the words 'sixty days' shall be substituted."

The amendment was negatived.

Mr. SPEAKER.—Amendment No. 13.

Sri M. C. NARASIMHAN.—Sir, I beg to move :

"That in sub-clause (8) for the word 'ten' the word 'seven' shall be substituted."

Mr. SPEAKER.— Amendment moved :

"That in sub-clause (8) for the word 'ten' the word 'seven' shall be substituted."

Sri M. C. NARASIMHAN.—I do not press this amendment.

The amendment was by leave of the House withdrawn.

Mr. SPEAKER.—Amendment No. 14.

Sri M. C. NARASIMHAN.—Sir, I beg to move :

"That the proviso to sub-clause (8) shall be deleted."

Mr. SPEAKER.—Amendment moved :

"That the proviso to sub-clause (8) shall be deleted."

†Sri M. C. NARASIMHAN.—This proviso requires that the total number of instalments in which leave can be taken shall not exceed three. This is rather strange because, it would apply as a standard to sick leave and leave under section 15. This is carried from the Factories Act. There the instalments refer to only leave, which is different from sick leave here. If sick leave and annual leave should be taken only in three instalments, I do not know how it works. Nobody can say that sick leave should be taken in three instalments, because

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sickness is a contingency which is not capable of being divided into a number of instalments. If I may say so the proviso is meaningless. In practice this proviso works as a serious hardship. Since there is no provision for casual leave, the employee should be allowed to take leave in any number of instalments as he chooses.

†Sri B. VAIKUNTA BALIGA.—It will be seen that in the proviso there are two aspects. One is it may be such number as may be agreed upon between the employer and the employee. The contingency is provided for. A certain reasonable limit has to be put and three has been put considering all the circumstances. My friend is trying to bring in the idea of sick leave. An employee in writing may apply to the manager not less than ten days before the date of availing of leave. When he takes leave provision has to be made.

Sri M. C. NARASIMHAN.—Can anybody apply for sick leave before 10 days ?

Sri B. VAIKUNTA BALIGA.—Sick leave under the existing circumstances, the employer will see that the persons concerned will get leave. There is no point in refusing sick leave.

Sri M. C. NARASIMHAN.—The statute requires ten days notice should be given for sickness...

Sri B. VAIKUNTA BALIGA.—No, no.

Sri M. C. NARASIMHAN.—You please read the clause:

> "An employee may at any time apply in writing to the manager of the establishment not less than ten days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calnedar year"

Unless you say that it applies to leave under section 15 (1) only, it means, it applies to both the ten days' notice.

Sri B. VAIKUNTA BALIGA.—So far as sick leave is concerned, no one can apply for sick leave ten days earlier. Whatever hardship is caused, about the application for sick leave, we shall see what can be done under the rules provided for.

MR. SPEAKER.—The question is :

> "That the proviso to sub-clause (8) shall be deleted."

The amendment was negatived.

Mr. SPEAKER.—To sub-clause 9, there is an amendment by the Hon'ble Minister.

Sri B. VAIKUNTA BALIGA.—Sir, I beg to move :

> "That in sub-clause (9) for the words 'to cover a period of illness', the words 'under sub-section (3),' shall be substituted."

Mr. SPEAKER.—Amendment moved :

"That in sub-clause (9), for the words 'to covor a period of illness', the words 'under sub-section (3),' shall be substituted."

Mr. SPEAKER.—I will put it to the House.

The question is :

"That in sub-clause (9) for the words 'to cover a period of illness', the words 'under sub-section (3)', shall be substituted."

The amendment was adopted.

Mr. SPEAKER.—There is another amendment by Sri Narasihan.

Sri M. C. NARASIMHAN.—I am not moving it.

Mr. SPEAKER.—I will put Clause 15 to the House.

The question is :

"That Clause 15, as amended, stand part of the Bill."

The motion was adopted.

"Clause 15, as amended stand part of the Bill."

Clauses 16 *to* 38.

Mr. SPEAKER.—The question is :

"That Clauses 16 to 38, both inclusive, stand part of the Bill."

The motion was adopted.

"Clauses 16 to 38, both inclusive, were added of the Bill."

Mr. SPEAKER.—Clause 39. There is an amendment by the Hon'ble Minister. He may move it.

Sri B. VAIKUNTA BALIGA.—Sir, I beg to move :

"That for Clause 39, the following clause shall be substituted, *viz.*, 39. Notice of dismissal. (1) No employer shall remove or dismiss an employee who has put in service under him continuously for a period of not less than six months, except for a reasonable cause and unless and until one month's previous notice or pay in lieu thereof has been given to him :

Provided that where misconduct of an employee is brought on record with proof at an enquiry held for the purpose, he shall not be entitled to the notice or pay in lieu of such notice.

(2) An employee removed or dismissed under sub-section (1) shall have a right of appeal to the prescribed authority or if no authority is prescribed to the Commissioner of Labour on the ground that there was no reasonable cause for the removal or dismissal or that he has not been guilty of misconduct as held by the employer.

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(3) Where an employee has been removed or dismissed without reasonable cause or without proof of misconduct, the employee shall, where the employer does not agree to reinstate him, be entitled to such compensation as the appellate authority may determine, provided that such compensation shall not exceed an amount calculated at one month's pay for every year of service subject, in any case to the maximum of six months' pay.

(4) Any person aggrieved by an order of the appellate authority may apply to the District Judge for a revision of such order and subject to the result of such application the decision of the appellate authority shall be final and binding on both the emoployer and the person employed.

(5) The amount payable as compensation under this section shall be in addition to any fine payable under Section 30 and shall be recoverable as a fine.

(6) No employee who has been awarded compensation under this section shall be entitled to bring a civil suit in respect of the same claim.

(7) If under any other law or under the terms of an award, agreement or contract of service, any employee is entitled to a longer period of notice or to more favourable benefits than are provided in sub-section (1) or sub-section (3) the provisions of the said sub-sections shall have effect as if such period of notice and such benefits had been enacted in this Act.''

Mr. SPEAKER.—Amendment moved :

''That for Clause 39, the following clause shall be substituted, *viz.*, 39. Notice of dismissal. (1) No employer shall remove or dismiss an employee who has put in service under him continuously for a period of not less than six months, except for a reasonable cause and unless and until one month's previous notice or pay in lieu there of has been given to him :

Provided that were misconduct of an employee is brought on record with proof at an enquiry held for the purpose, he shall not be entitled to the notice or pay in lieu of such notice.

(2) An employee removed or dismissed under sub-section (1) shall have a right of appeal to the prescribed authority or if no authority is prescribed so the Commissioner of Labour on the ground that there was no reasonable cause for the removal or dismissal of that he has not been guilty of misconduct as held by the employer.

(3) Where an employee has been removed or dismissed without reasonable cause or without proof of misconduct, the

employee shall, where the employer does not agree to reinstate him, be entitled to such compensation as the appellate authority may determine, provided that such compensation shall not exceed an amount calculated at one month's pay for every year of service subject, in any case to the maximum of six months' pay.

(4) Any person aggrieved by an order of the appellate authority may apply to the District Judge for a revision of such order and subject to the result of such application the decision of the appellate authority shall be final and binding on both the employer and the person employed.

(5) The amount payable as compensation under this section shall be in addition to any fine payable under Section 30 and shall be recoverable as a fine.

(6) No employee who has been awarded compensation under this scetion shall be entitled to bring a civil suit in respect of the same claim.

(7) If under any other law or under the terms of an award, agreement or contract of service, any employee is entitled to a longer period of notice or to more favourable benefits than are provided in sub-section (1) or sub-section (3) the provisions of the said sub-sections shall have effect as if such period of notice and such benefits had been enacted in this Act."

Mr. SPEAKER.—There is an amendment to the amendment of the Hon'ble Minister.

Sri V. SRINIVASA SHETTY.—Sir, I beg to move :

"That in the amendment to sub-clause (3) for the words 'where the employer does not agree to reinstate him ' the words 'where the prescribed authority for sufficient reasons is of the opinion that the employee shall not be reinstated' shall be substituted."

"That the words 'subject in any case to the maximum of six month's pay' shall be deleted."

Mr. SPEAKER.—Amendment to the amendment moved :

"That in the amendment to sub-clause (3) for the words 'where the employer does not agree to reinstate him' the words 'where the prescribed authority for sufficient reasons is of the opinion that the employee shall not be reinstated' shall be substituted."

"That the words 'subject in any case to the maximum of six month's pay' shall be deleted."

Both the amendment of the Hon'ble Minister and the amendment to that amendment are before the House.

†Sri B. VAIKUNTA BALIGA.—Sir, it will be seen that the amendment proposed by the Government goes a very very long way. I may say that so far as this amendment is concerned, I have prepared a comparative statement of all the statutes that are going to be unified as also a model Bill which was given to us. As a result of the study of all those, I have considered and the Government is of the opinion that what has been prevailing in the four areas of Mysore State where the Mysore Shop Establishments Act was in force, is really favourable. It will be noticed that in the case of dismissal of an employee, the previous provision was with regard to payment of one month's wages and if there was dismissal no right of appeal was provided. But, in view of the several representations made and also on account of inequity, this amendment has been brought before this House.

So far as the question of reinstatement is concerned, much has been said in the course of the general discussion. It was said that a provisino similar to that in Madras Act should be provided. I can read the relevant provision of the Act but for want of time I cannot do so. It does not expressly provide for any reinstatement as such; but it does not also put any limitation. So, the question of reinstatement is only by implication. Here it is said that if the employer does not agree, it must be a question of wages or salary for a period of six months on a definite basis. I have already explained the position regarding reinstatement. Generally, it is not desirable in the interest of both the employer and the employee. It is very necessary that cordial relations should subsist and that is why suitable provision exists in the Acts already in force in old Mysore, Hyderabad Karnatak and Bombay Karnatak. I may say that so far as these areas are concerned, no catastrophe has happened anywhere. In the old Mysore I think certainly there has been no case wherein any hardship has arisen. I do not know whether the Hon'ble can show any particular instance of hardship.

Sri M. C. NARASIMHAN.—There is not one instance but any number.

Sri B. VAIKUNTA BALIGA.—My friend seems to think that there is a large number. I am sure he will mention them if there be any.

There have been cases where appeals have been filed before the Commissioner and the Commissioner has passed orders. There is no question of reinstatement not being dealt with having agreed that hardship has been caused. When a person's services have been terminated rightly for a justifiable cause, termination is perfectly proper and no body can have any grievance. In case where it has been done wrongly, if that person were to seek service elsewhere he is at liberty and in addition to that he is entitled to have damages or other charges under the provisions of the Act. Therefore I feel reinstatment is not one which is absolutely necessary unless it is a question of putting it for a debate saying that it may also be provided.

I would say that taking a overall picture and considering equities that govern the situation, suitable provision is made and this will go a

long way to help them. Therefore, I would appeal to the members: let us have this legislation and let us work it for sometime. If really it works as a hardship, it will be perfectly open to amend it again.

†Sri V. SRINIVASA SHETTY.—Sir, this a most important amendment. The Hon'ble Minister seems to think that justice lies on that side and there is no case for this side. I am sorry for that impression. The amendment is quite innocuous, not a very straight one and an unjust one. What the amendment seeks to provide is, in case the appellate authority finds it proper it can award compensation if the employers do not like reinstatement. It does not *prima facie* say that every person is entitled to reinstatement. In cases where the court finds the act of an employer as unjust and feels that reinstatement would be proper, why should you fetter the hands of the court. In cases where a recalcitrant employer for some raeson does not want an employee and if the Commissioner feels that the employee has a rightto be reinstated, why should the hands of the Commissioner be fettered. So, I am unable to understand the position. This is a reasonable amendment.

He has also put a ceiling for compensation. Let the court provide for compensation. Whatever is reasonable let the court decide. So, this is a reasonable amendment and I request the Hon'ble Minister to accept this.

†Sri M. C. NARASIMHAN.—One point mentioned by the Hon'ble Minister was rather extraordinary. He said that reinstatement is not desirable either for the employer or an employee. I concede that he has every authority to speak on behalf of the employers but I wonder whether the trade unions including the INTUC which, I think, the Law Minister is required to patronise, will accept his view and say that this is in the best interest of labour. The entire gamut of labour courts decisions in this country is centered round the question of reinstatement. It is whether the court has a right or not to order reinstatement. The case has gone up even before the Supreme Court and a number of times the dismissals have been challenged. In a number of cases the Supreme Court has held that the person who is dimissed is entitled to be reinstated. So, I am rather surprised and astonished at the statement made by the Law Minister that reinstatement is not desirable. Even assuming that it is not desirable, leave it to the court to decide. You should not sit in judgment. I want the Government not to impose its decisions on this matter as to whether reinstatement is desirable or not. You leave it to the court. The court can always look into the matter and say that in a particular case due to the relationship subsisting between the employer and the employee, it may not be appropriate or proper to reinstate the employee. If even for a minor case of misconduct the the authority dismisses an employee and the employee goes to a court. Should not the court be allowed to use its discretion. I can understand the case of theft or serious misconduct of an employee. Sir, the other point is, the Hon'ble Minister says that the Government have gone very far in this amendment. Strictly speaking it is not so. I want to

(Sri M. C. NARASIMHAN)

submit in the course of my observation that the Bill as it stands provides for one months notice in the case of discharge. This amendment has not taken away that right. I thought by improvement they would adopt what is found in Hyderabad Legislation where they offer 15 day's gratuity for every year of service put in. Even under the original Bill, Section 29 provided for one month's salary being paid in case of discharge. The only improvement he has provided here is payment of compensation to a maximum of six months' pay. So, this amendment does not meet the agitation or not meet the point at issue. The Minister was pleased to say that no hardship would be caused in the working of the Mysore enactment. There, I am afraid he is forgetting facts. Before the Select Committee there were several memoranda submitted not merely by the South Kanara but throughout the State several memoranda have been submitted, and this particular point in respect of security of service was urged. One other point is, in Madras, subsequently in 1958, they have enacted what is called Catering Establishments Act. There also they provide in Section 19 exactly similar to what is contained in amendment to Clause 39 (1), where by implication the Court or the Commissioner of Labour had the right to reinstate an employee. Section 40 of the Madras Act was challenged in High Court of Madras as being unconstitutional and as interfering with the right of the employer to reinstate or not to reinstate an employee. The Madras High Court has held it constitutional. On that ground the Minister need not have any apprehension. One other fact is this: It says "where an employer does not agree to reinstate". There is a misunderstanding about the phrase 'reinstate'. Reinstate does not mean total restitution of right. It is only a remedy. He may be taken back to work without back wages. That is not a restitution, It is restoration to a position prior to dismissal without back wages taking the financial capacity of the employer into consideration. Supposing he does not agree to reinstate. Even then the court would have said "take him back to work but he shall not be entitled to back wages." Even that discretion is sought to be taken away. I submit this is really a retrograde provision and one which is not calculated to promote industrial harmony or promote harmony in the long list of establishments to which this Act applies. There are variety of powerful employers for example hotels, commercial establishments, insurance companies and banking companies; to suggest that these institutions are not in a position to bear the burden of reinstatement in the event of court deciding it, or grant any other appropriate relief, according to me, is a thing which passes my comprehension. The draft Bill circulated by the Government of India is similar to clause 39 which the Hon'ble Minister has chosen to amend. I may say that the principles of the draft Bill were never subject matter of discussion in the Labour Conference which is Tripartite Body. With these words, I once again appeal to the Hon'ble Law Minister not

to be unreasonable or adopt an ostrich-like policy and consider the reasonableness of the amendment.

†Sri B. VAIKUNTA BALIGA.—A comparison of the provision which I have already referred to, will go to show that what is now being done is an improvement. My friend omitted to mention that there is special provision which is not found in 1947 Mysore Shops and Establishments Act, namely sub-clause (4) where further remedy is given, namely 'any person aggrieved by an order of the appellate authority may apply to the District judge for a revision of such order'. That is what I meant by saying that all possible things have been done. My friend himself gave the answer to the question of reinstatement by citing the idea of harmony If a person is reinstated with the possible danger that might arise by the person who is not wanted by the employer being in there and so many other secrets or information might leak out and if a person is put in there against the will of the employer, I do not know whether I will not be right in saying that the two will be looking at each other askance rather than working smoothly? Anyway this has been discussed elaborately both in the general debate and now. I must say I am unable to accept the amendment.

MR. SPEAKER.—The question is:

"That in the amendment to sub-clause (3) for the words 'where the employer does not agree to reinstate him' the words 'where the prescribed authority for sufficient reasons is of the opinion that the employee shall not be reinstated' shall be substituted."

"The words 'subject in any case to the maximum of six months' pay' shall be deleted."

The amendment was negatived.

MR. SPEAKER.—The question is:

"That for clause 39, the following clause shall be substituted, *viz.*,

'39. Notice of dismissal. (1) No employer shall remove or dismiss an employee who has put in service under him continuously for a period of not less than six months, except for a reasonable cause and unless and until one month's previous notice or pay in lieu therefor has been given to him:

Provided that where misconduct of an employee is brought on record with proof at an enquiry held for the purpose, he shall not be entitled to the notice or pay in lieu of such notice.

(2) An employee removed or dismissed under sub-section (1) shall have a right of appeal to the prescribed authority or if no authority is prescribed to the Commissioner of Labour on the ground that there was no reasonable cause for the removal

(Mr. Speaker)

or dismissal or that he has not been guilty of misconduct as held by the employer.

(3) Where an employee has been removed or dismissed without reasonable cause or without proof of misconduct, the employee shall, where the employer does not agree to reinstate him, be entitled to such compensation as the appellate authority may determine, provided that such compensation shall not exceed an amount calculated an one month's pay for every year of service subject, in any case to the maximum of six months' pay.

(4) Any person aggrieved by an order of the appellate authority may apply to the District Judge for a revision of such order and subject to the result of such application the decision of the appellate authority shall be final and binding on both the employer and the person employed.

(5) The amount payable as compensation under this section shall be in addition to any fine payable under section 30 and shall be recoverable as a fine.

(6) No employee who has been awarded compensation under this section shall be entitled to bring a civil suit in respect of the same claim.

(7) If under any other law or under the terms of an award agreement or contract of service, any employee is entitled to a longer period of notice or to more favourable benefits than are provided in sub-section (1) or sub-section (3) the provisions of the said sub-section shall have effect as if such period of notice and such benefits had been enacted in this Act'."

The amendment was adopted.

Mr. Speaker.—The question is:

"That Clause 39, as amended, stand part of the Bill."

The motion was adopted.

Clause 39, as amended, was added to the Bill.

Mr. Speaker.—The question is:

"That Clauses 40 to 44 both inclusive and the Schedule stand part of the Bill."

The motion was adopted.

Clauses 40 to 44 both inclusive and the Schedule were added to the Bill.

Clause 1

Sri B. VAIKUNTA BALIGA.—Sir, I beg to move:

"That for sub-clause (4), the following sub-clause shall be substituted, namaly:-

(4) (*a*) It shall apply in the first instance to the areas specified in the schedule to this Act and to such other areas in which any of the Acts repealed by Section 42 applied.

(*b*) It shall apply to any other area with effect from such date as the State Government may by notification specify which date shall not be earlier than the expiry of three months from the date of publication of such notification in the official gazette."

Mr. SPEAKER.—Amendment moved:

That sub-clause (4), the following sub-clause shall be substituted, namely:-

"(4) (*a*) It shall apply in the first instance to the areas specified in the schedule to this Act and to such other areas in which any of the Acts repealed by Section 42 applied.

(*b*) It shall apply to any other area with effect from such date as the State Government may by notification specify which date shall not be earlier than the expiry of three months from the date of publication of such notification in the official gazette."

Sri B. VAIKUNTA BALIGA.—Sir, it is a very simple amendment. All that it does is to clarify the position so that there may not be any doubt and debate. I therefore submit that it may be accepted without any further debate.

Mr. SPEAKER.—The question is:

"That for sub-clause (4), the following sub-clause shall be substituted, namely:-

(4) (*a*) It shall apply in the first instance to the areas specified in the schedule to this Act and to such other areas in which any of the Acts repealed by Section 42 applied.

(*b*) It shall apply to any other area with effect from such date as the State Government may by notification specify which date shall not be earlier than the expiry of three months from the date of publication of such notification in the official gazette."

The amendment was adopted.

Mr. SPEAKER.— The question is:

"That Class 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Mr. SPEAKER.—The question is :

"That the Preamble and the Short Title stand part of the Bill."

The motion was adopted.

The Preamble and the Short Title were added to the Bill.

Motion to pass

Sri B. VAIKUNTA BALIGA.—Sir, I beg to move :

"That the Mysore Shops and Commercial Establishments Bill, 1961, as passed by the Legislative Council and amended, be passed."

† Sri C. M. ARUMUGHAM.—Sir, we are passing this Bill in view of the ensuing general election. Most of the workers and the poor people are going to vote that party into power which has been reasonable to them all this time. No lady with lip stick would go, stand before the polling station and vote for the Congress. Similarly, no gentleman moving in a Rolls Royce Car would go to the polling station and vote for the Congress. It is the poor people who are going to vote for them. We are enacting this law for the workers. This Congress Government which has accepted the socialistic pattren of society and has claimed a lot of things has enacted legislation to bring about uniformity the State, uniformity for India and uniformity for the whole world. So far as the hours of work are concerned, the Mysore State is so backward as compared to other States. When all other States have fixed 8 hours a day and the world organization has fixed 8 hours. I cannot understand how the Labour Minister has fixed 9 hours for our State.

Mr. SPEAKER.—That has been accepted by the House and he is trying to open up a decision taken by this House; that cannot of be done.

Sri M. C. NARASIMHAN.—I have looked into the debates of Bombay and Madras Assemblies and I find that during third reading it is open to a member to repeat.

Mr. SPEAKER.—Any decision taken by the House cannot be opened up except by a specific substantial motion. There is very little scope during this stage. He can only make a few general remarks.

Sri C. M. ARUMUGHAM.—We are enacting a law which is fundamentally contrary to the world law. Another thing is that fixation of minimum wages for agricultural workers is provided for in the Constitution, but nowhere in this Bill there is any mention about it. In so many hotels the servants are threatened and no wages are paid.

Sri M. C. NARASIMHAN.—Sir, I can point out instances from the proceedings of Madras Assembly, parliament and other State Legislatures to show that even during the third reading stage the same points are urged and they have never been held as something unconstitutional or contrary to the procedure. You can take shelter under the provision that there can be no repetative debate. I am definite about it,

MR. SPEAKER.—I will refer the Hon'ble Member to Rule 92. He will also credit me with a little more experience. I was the Deputy Speaker in Bombay and I know it for certain that decisions once accepted by the House are not allowed to be opened up. I do not know the position in Madras.

11-30 A.M.

† Sri C. M. ARUMUGHAM.—Sir, what I am saying is, that we are enacting a law which is against the spirit of the Constitution. The Constitution does not provide for giving food only. Where have you mentioned that such employees should get wages also ? We know that in so many shops the workers are fed but no wage is given. To encourage such a thing, is it correct ? Is it a progressive legislation ? If we pass this, we are enacfing a law which is contrary to the law of the world. After attaining independence we have a lot of things to do, for the workers. They are illiterates. In many establishments and shops, they are given only food. Are you not acting country to the world law? You participate in several conferences of the United Nations and say that the workers must participate in management ?

† Sri J. B. MALLARADHYA.—I looked into the provisions of the Rules of procedure in Lok Sabha and we have copied more or less the same provision. I invite attention to Rule 94 in regard to the scope of the debate· Our rule also is on identical terms with that rule. It is said that while making a speech a member shall not refer to the details. I am only trying to agree with that the Hon'ble Speaker has said. I thought Sri M. C. Narasimhan would refer to a different procedure obtaining in Lok Sabha. My Hon'ble friend differed from the view expressed by the Hon'ble Speaker in regard to the scope of the speech that the Hon'ble Member Sri C. M. Armugham is making. As members of this House it is our duty to establish conventions. I am not objecting but I am only trying to argue that the Hon'ble Speaker ruling is perfectly in accordance with the Lok Sabha practice, and I think we should respect the ruling and not try to seek shelter by something done outside.

Sri M. C. NARASIMHAN.—I cannot understand the implication of the Hon'ble Momber's remarks. You have already allowed Sri C. M. Arumugham to speak. This is the first we are having a discussion at the stage of third reading. He said that a convention has already been established. You actually said that the scope of the debate should be restricted. The implication of the statement of the Leader of the Opposition is that no debate should be there. You must either say that the debate is unnecessary or what is the convention you have established.

MR. SPEAKER.—I agree with the Leader of the Opposition. At the time of the third reading be can only offer remarks of a generel character. That means, the member cannot in any way cover the ground which has already been covered at the first and second reading stage. They cannot also in any way talk against the decisions already taken.

Sri M. C. NARASIMHAN.—Sir, I submit that it is a question of interpretation or how you decide a case. If we regidly say that on ground that has already been covered at the first and second reading stage be covered again, then all the clauses should have been passed.

Sri B. D. JATTI.—The Chair has already given a correct decision and it is not at all good for us to argue.

Mr. SPEAKER.—The rule is quite clear that no member can cover the same ground which has be already been covered at the first and second reading stage and any decision already taken cannot be reopened.

Sri C. M. ARUMUGHAM.—Sir, may I know on what lines we can speak during the Third Reading of the Bill?

Mr. SPEAKER.—I cannot say that.

†Sri C. M. ARUMUGHAM.—When the Hon'ble Speaker says that something is irrelevant I shall not speak and when he says that a particular matter is relevant I shall speak. I do not care for what the ministers say.

Until the Speaker says that I am irrelevant I am bound to speak and I have a right to speak. I am saying you are making a law contrary to the law existing in the entire India and world and it against the conventions adopted by the I.L.O. If this Bill comes into law, there will be no security for the workers in the establishments. This Bill is meant to safeguard the rights of workers but it does not provide any security at all. It is left to the option of employers; if they want they can appoint and if they do not want, they may send away anybody with one month's notice. Is it progressive? After 14 years of independence we are bringing a Bill to say that an employer can appoint anybody as he likes and dismiss anybody as he likes. The Government do not want to have any control over the establishments and employers. Have you got any control over the employer? They want chaos to prevail. The Constitution says there must be protection for everybody. Here you say they can appoint or dismiss anybody as they like. This Bill is in no way a progressive measure. This Bill does not improve the lot of workers in the establishements; on the other hand it helps the capitalists of the country. It is just to seek their votes in the general election. But it is not going to help the workers.

†Sri G. VENKATAI GOWDA.—My submission is that the purpose for which this Bill is intended to be enacted is not going to be achieved at all. I am opposing the enactment. The fundamental aim is to provide security in service and as is contemplated, I am afraid that object is not going to be achieved or implemented if this Bill is enacted into law. My feeling is that the welfare of labour is to be the uppermost intention when we pass a legislation of this kind. But when we do not provide for security of service. I do dot think that intention is fulfilled and the object with which we are enacting this law is going to be realised, because the court's decision has been fettered in the sense that the

compensation provided is not an adequate relief which depends on a variety of reasons. Unless you make a suitable provision for allowing those persons to get back into service, there is no question of welfare of labour being provided here. I am submitting that the intention with which you are enacting this Bill is not going to be served. So, I oppose this legislation.

†Sri B. VAIKUNTA BALIGA.—Sir, I do not wish to get into any detail. But I must certainly repudiate the suggestion that was made by Mr. Arumugham that it was a vote catching device to attract the capitalists which is an unfounded remark and I do not know whether his speech is also one of vote catching.

Mr. SPEAKER.—The question is:

"That the Mysore Shops and Commercial Establishments Bill, 1961, as passed by the Legislative Council, and as amended be passed."

The motion was adopted.

THE MYSORE NURSES, MIDWIVES AND HEALTH VISITORS BILL, 1960.

Motion to consider

Sri K. K. HEGDE (Minister for Health).—I beg to move:

"That the Mysore Nurses, Midwives and Health Visitors Bill, 1960, be taken into consideration."

Mr. SPEAKER.—Motion moved:

"That the Mysore Nurses, Midwives and Health Visitors Bill, 1960, be taken into consideration."

(Mr. DEPUTY SPEAKER in the Chair)

†Sri K. K. HEGDE.—Sir, this is a Bill involving all the nursing and midwifery staff in the whole State. So far we are having different enactments in different areas of the State and to have uniform legislation and to have uniform control over nursing profession in the State, this Bill has been brought before the Assembly and the whole Bill has been drafted after careful consideration after going through the various Bills in the whole State and in consultation with the W. H. O. The Bill consists of about seven parts. The first part gives a short title and definitions; the second part refers to constitution of Nursing Council and various procedures to be followed in the election and nomination of the Members of the Council and disqualifications and disabilities to become members of the Council and how to fill up vacancies thereto. Part III consists of registration of nurses and midwives and their qualifications; part IV refers to qualifications required in particular areas and municipalities. Part V relates to nurses establishments and the last